

whether the people who drafted the motion even stopped to think for a few minutes—

And the author of this letter adds in brackets:

—(if they can think).

I am sure you have enough sense not to support this motion, at least until people have had a chance to talk about it. Personally, I do not think even an opinion pool would be an adequate way to deal with this. If you analyze it, this is a matter that goes beyond the right to own property constitutionally.

Finally, the author of the letter concludes by reiterating his concern that such a proposal would be enshrined in the Canadian Charter of Rights and Freedoms.

What it all boils down to, Mr. Speaker, is that many people would welcome some kind of formula whereby they would be personally assured that nobody would invade, take over or even remove their property, but at the time they emphasize that such a guarantee should not have a negative impact which might totally offset any positive aspect.

Mr. Speaker, I repeat what I said in the last debate on a similar subject: some of us are in favour of this principle, and we certainly do not question the good will of the Hon. Member who has raised this issue. Perhaps the best thing to do as parliamentarians would be to submit this file to a parliamentary committee and ask constitutional experts with wide-ranging experience in Canada and the United States, where they have been familiar with this kind of entrenchment for years, to give us their opinion and reassure all of us that such constitutionally guaranteed rights would not, as I said earlier, turn out to be a disaster rather than a blessing.

● (1650)

[English]

**Mr. Ross Belsher (Fraser Valley East):** Mr. Speaker, I also wish to acknowledge the commitment the Hon. Member for Lethbridge-Foothills (Mr. Thacker) has shown to the entrenchment of property rights. It is a commitment that I too share. I am pleased that we have the opportunity today to deal with this matter and to discuss some of the issues. At the same time I must say that I agree that Private Members' Hour does not lend itself to a full examination of the issues. The entrenchment of property rights in the Constitution is a matter of no little significance and of some debate. We should be careful to accord this matter the consideration it warrants and not to foreclose public debate by all the interested parties.

I approach this matter with the basic premise that property rights should be entrenched in the Canadian Charter of Rights and Freedoms along with such other basic rights as the right to life, liberty and security of the person. The point of entrenching property rights in the Constitution, as I see it, is to ensure that the property rights which we now enjoy are not dependent simply on the good will of government. Governments do change, as we all know. Currently there is nothing to prevent a Government in Canada from passing laws which unfairly restrict property rights. By entrenching property rights in the Constitution, we would protect them from the arbitrary

### *Constitution Act, 1982*

encroachments of government. Today we enjoy, by virtue of the common law, many property rights protections against the action of other citizens. We can, for instance, sue in the civil courts persons who trespass on our land or who create nuisances which affect our enjoyment of our land. We would, however, be, to a great extent, legally helpless if Government were to pass a law enabling it to affect arbitrarily and detrimentally our use and enjoyment of land. Entrenching property rights in the Constitution would provide protections against such arbitrary and ill-considered government action.

In entrenching property rights in the Constitution, we would be following the lead of several western nations. In the United States, for example, property rights are protected by the United States Bill of Rights. The United States federal Government has been subject to constitutional property rights guarantees for almost 200 years.

In 1791, the Fifth Amendment to the Constitution was passed. It provides that no persons shall be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use without just compensation. Towards the end of the 19th century, but still more than 100 years ago, the United States Constitution was amended to apply property rights guarantees in respect of the state Governments. In 1868, the Fourteenth Amendment to the Constitution was passed. It provides that no state shall "deprive any person of life, liberty or property, without due process of law".

In the United States and other countries, property rights have received constitutional protection because they recognize, as we do, the fundamental importance of these rights to the preservation of democracy. In my view, the concept of property is inseparably linked with freedom. This link has been articulated by the American legal scholar, Charles Reich, from whom I would like to quote. At page 733 of Volume 73 of the *Yale Law Journal* he wrote:

The institution called property guards the troubled boundary between individual man and the state. It is not the only guardian; many other institutions, laws, and practices serve as well. But in a society that chiefly values material well-being, the power to control a particular portion of that well-being is the very foundation of individuality.

Professor Reich traced further the connection between property and liberty at page 771:

Property is a legal institution the essence of which is the creation and protection of certain private rights in wealth of any kind. The institution performs many different functions. One of these functions is to draw a boundary between public and private power. Property draws a circle around the activities of each private individual or organization. Within that circle, the owner has a greater degree of freedom than without. Outside, he must justify or explain his actions, and show his authority. Within, he is master, and the state must explain and justify any interference. It is as if property shifted the burden of proof; outside, the individual has the burden; inside, the burden is on Government to demonstrate that something the owner wishes to do should not be done.

Thus, property performs the function of maintaining independence, dignity and pluralism in society by creating zones within which the majority has to yield to the owner.

I think that Hon. Members will agree that Professor Reich very persuasively makes the case for the protection of property rights. On this understanding of the concept of property, the right to own and enjoy property is no less important than the